

In The United States District Court  
Middle District of Pennsylvania

24 CV

(10)  
7/19/01  
48m

ORIGINAL

Richard Wojtyak,  
Plaintiff

Civil Action

Vs.

Penna. Dept of Corrections, et al.  
Defendants

No: 1:01-1163

(Rambo, J.)  
(Mannin, M.J.)

Plaintiff's Objections  
TO

FILED  
HARRISBURG

JUL 19 2001

Magistrate - Judge

MARY E. D'ANDREA, CLERK  
PER 914  
DEPUTY CLERK

Report - Recommendations - Findings

Dismissing Plaintiff's Civil Action

Memorandum of Law

Dated: 7-17-01

Respectfully Submitted

s/ Richard Wojtyak  
Richard Wojtyak AF5977  
1100 Pike St.  
Huntingdon, Pa. 16654-1111

## Table of Citations

Brown v. U.S., 742 F.2d 1488 (D.C. Cir. 1984) cert. den. 105 S.Ct. 2153 (1985)  
Cardo v. Lakeland Cent. School Dist., 592 F.Supp. 765 (S.D.N.Y. 1984)  
Felder v. Casey, 108 S.Ct. 2302 (1988)  
Finley v. H. Jacobbe, 827 F.Supp. 215 (S.D.N.Y. 1993)  
Nolan v. Wheatley, 835 F.Supp. 476 (N.D. Ill. 1993)  
Penna. Dept. of Corrections v. Yesky, 118 S.Ct. 1952 (1995)  
Smith v. Barton, 914 F.2d 1330, 1338 (9 Cir. 1990) cert. den. 111 S.Ct. 2825 (1991)

## Regulatory References

28 CFR 35.105

28 CFR 35.107

28 CFR 35.130

28 CFR 35.135

28 CFR 35.140

28 CFR 35.150

28 CFR 35.170

28 CFR 35.178

## Other Provisions

Americans With Disabilities Act of 1990 - Rehabilitation Act of 1973 (ADA)

ADA, Title II, § 3.4000

ADA, Title II, § 3.4100

ADA, Title II, § 4.1000

ADA, Title II, § 5.0000

ADA, Title II, § 6.3300

ADA, Title II, § 8.2000

Your plaintiff, Richard Wojtylak, herein Objects to the Magistrate - Judge, Report-Recommendation - Findings dismissing his American with Disabilities Act of 1990 - Rehabilitation Act of 1973 (hereafter ADA) for failure to exhaust administrative remedies. (copy of same attached)

The Honorable Court has simply and plainly misread plaintiff's Complaint.

Plaintiff DOES NOT bring a claim before the Court --- that the Penna. Dept. of Corrections AND other defendants have 'violated' their own 'administrative guidelines/procedures/customs/policy statements' DC-ADM006.

Your plaintiff alludes to, makes mention of DC-ADM006 SOLELY for the assistance and convenience, reference for the Court. That the defendants cannot claim ignorance to the ADA, and that the ADA does not apply to them. Also to emphasize the fact, to the court, that the defendants HAVE NOT been in compliance with the ADA from its effective date JAN. 26, 1993 --- to present --- 9 YEARS! --- ADA, Title II, II 4.1000 General,

regulatory reference 28 CFR 35.140; ADA, Title II, II 5.0000 Program accessibility, reg.

reference 28 CFR 35.140; ADA, Title II, II 6.3300 Types of Facilities, reg. ref. 28 CFR 35.140

ADA, Title II, II 8.2000 Self Evaluation, reg. ref. 28 CFR 35.105; 35.107, 35.150 (c) and (d)

The defendants have discriminated against

this plaintiff because of his disabilities ---

--- this DOES VIOLATE the Federal Law (ADA) ---

ADA, Title II, II 3.4000 and ADA, Title II, II 3.4100, reg. ref. 28 CFR 35.130, 35.135

Your plaintiff, Richard Wojtylak, DOES bring a claim before this court --- that the defendants have discriminated against him because of his disabilities --- AND this discrimination DOES VIOLATE the ADA, Federal Law. Your plaintiff DOES state a claim and is properly before this Honorable Court with

his claim -- Penna. Dept. of Cor. V. Yesky, 118 S.Ct 1952 (1995).  
 A prudent reading of plaintiff's  
 claim-civil action definitely presents  
 a claim under the ADA. (plaintiff's  
 complaint attached).

The magistrate-judge has arbitrarily and erroneously turned plaintiff's  
 Complaint-claim under the ADA, discrimination by the defendants  
 against plaintiff because of his disabilities, into some sort of  
 'violation' by the defendants of their own 'administrative guidelines/  
 procedures/customs/policy statements' --  
 --- and dismisses plaintiff's  
 complaint for the plaintiff's  
Failure to exhaust administrative  
 Remedies.

This inconsistent, incoherent, derivation, by the magistrate-judge,  
 clearly ignores the United States Supreme Court's holding in  
 (Finley V. Biscette, 827 F.Supp. 215 (S.D.N.Y. 1993) citing the Supreme Court in  
 Felder V. [REDACTED], 108 S.Ct 2302 (1988)) -- the notice-of-claim (exhaustion  
 of administrative remedies) requirement is inconsistent in both the purpose  
 and objective of federal civil rights law and that principles of federalism  
 as well as the supremacy clause dictate that such a requirement  
 must give way to vindication of a federal right. The court also  
 wrote that it fully agreed with the near unanimous conclusion  
 of the federal courts that notice-of-claim (exhaustion of administrative  
 Remedies) provisions are inapplicable to §1983 actions brought  
in federal court. See also Brown v. U.S., 742 F.2d 1488 (D.C. Cir. 1984)  
cert den, 105 S.Ct 2153 (1985).

Under 'Felder' supra., it is clear that Cardo v. Lakeland Cent. School Dist.  
592 F.Supp. 765 (S.D.N.Y. 1984) is a dead letter.

A careful reading of Nolan v. Wheatley, 835 F.Supp. 476 (W.D. Ill. 1993)  
 the 'Nolan' court spoke in No uncertain, ambiguous, vague

language --- that the ADA, DOES NOT require complainants to exhaust administrative remedies --- claims under Title I of the ADA, DO NOT require exhaustion of administrative remedies Smith V. Barton, 914 F.2d 1330, 1338 (9th Cir. 1990) cert den 111 S.Ct. 2825 (1991) --- see 'Nolan' at 482 (6-7) and other citations.

--- the regulations specifically provide that although (federal) agencies are available to hear claims under the ADA, plaintiffs are NOT required to file with the agencies PRIOR to filing in federal court --- 28 CFR 35.170-178 (1993) --- see 'Nolan' at 483 (8) and other citations.

--- the ADA requires the establishment of administrative procedures for resolution of complaints, but DOES NOT require complainants to exhaust administrative remedies. The Committee Reports make clear that Congress intended to provide a private right of action with the full panoply of remedies for individual victims of discrimination.

Because the ADA, DOES NOT require exhaustion of administrative remedies, the complainant may elect to proceed with a private suit at any time --- Nolan V. Wheatley, supra, at 483 (8) and other citations. The ADA, DOES NOT require complainants to exhaust administrative remedies PRIOR to instituting litigation. The enforcement of the ADA, is NOT LIMITED to the available administrative remedies and procedures, rather, complainants have a private right of action and may elect to proceed with a civil suit at any time --- Nolan V. Wheatley, supra, at 484-485 (10-12-13-14) and other citations.

For these citations of law, this Honorable Court must not dismiss plaintiff's claims - civil action.

Respectfully Submitted,  
 s/ Richard H. Hoptek  
Richard Hoptek AE5977  
 1100 Pike St.  
 Huntington, Pa. 16654-1112

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

*see*  
*7-11-01*  
*file*

RICHARD WOJTCZAK, : CIVIL ACTION NO. 1:01-1163  
Plaintiff : (RAMBO, J.)  
v. : (MANNION, M.J.)  
PENNSYLVANIA DEPARTMENT OF :  
CORRECTIONS, et al., :  
Defendants :

N O T I C E

TO: Richard Wojtczak, Reg. No. AF-5977  
SCI-HUNTINGDON  
1100 Pike Street  
Huntingdon, PA 16654-1112

**FILED**  
**WILKES BARRE**

JUL - 9 2001

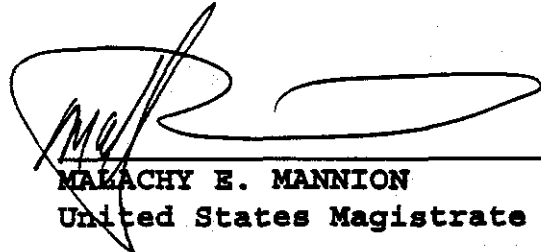
MARY E. D'ANDREA, CLERK  
~~Per~~ DEPUTY CLERK

NOTICE IS HEREBY GIVEN that the undersigned has entered  
the following: Report and Recommendation of Magistrate  
Judge Mannion dated 07/9/01.

Any party may obtain a review of the magistrate judge's above  
proposed determination pursuant to Rule 72.3, M.D.PA, which  
provides: 72.3 REVIEW OF REPORTS AND  
RECOMMENDATIONS OF MAGISTRATE  
JUDGES ADDRESSING CASE DISPOSITIVE  
MOTIONS

Any party may object to a magistrate judge's proposed  
findings, recommendations or report addressing a motion or matter  
described in 28 U.S.C. § 636(b)(1)(B) or making a recommendation  
for the disposition of a prisoner case or a habeas corpus  
petition within ten (10) days after being served with a copy  
thereof. Such party shall file with the clerk of court, and  
serve on the magistrate judge and all parties, written objections  
which shall specifically identify the portions of the proposed  
findings, recommendations or report to which objection is made

and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.



MAKACHY E. MANNION  
United States Magistrate Judge

Dated: July 9, 2001

rec  
7-11-01 per

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

RICHARD WOJTCZAK, : CIVIL ACTION NO. 1:01-1163

Plaintiff : (RAMBO, J.)

v. : (MANNION, M.J.)

PENNSYLVANIA DEPARTMENT OF :  
CORRECTIONS, et al., :

Defendants :

**FILED**  
**WILKES BARRE**

JUL - 9 2001

MARY E. D'ANDREA, CLERK  
Per DEPUTY CLERK

REPORT AND RECOMMENDATION

Plaintiff, an inmate at the State Correctional Institution, Huntingdon, ("SCI-Huntingdon"), Pennsylvania, filed this civil rights action pursuant to 42 U.S.C. § 1983, in which he alleges that the defendants violated his rights with respect to Department of Corrections Policy Statement DC-ADM 006 relating to accommodations for inmates with disabilities. (Doc. No. 1). The filing fee having been paid, the complaint will now be given preliminary consideration.

Named as defendants to this action are the following employees and/or officials at SCI-Huntingdon: Jeffery A. Beard, Ph.D., Secretary of the Department of Corrections; Kenneth Kyler, Superintendent; P. Yarger, Health Administrator; Roger Kimber, M.D., Medical Director; P. Everhart, Nurse Supervisor; and Scott Walters, Unit Manager. In addition, the plaintiff has named the Pennsylvania Department of Corrections as a defendant to this action.

In sum, the plaintiff alleges in his complaint that on August 16, 1999, Policy Statement DC-ADM 006 was made effective, which establishes the policies and procedures to be used by prison

officials in providing reasonable accommodations for disabled inmates who qualify under the Americans with Disabilities Act, ("ADA"). The plaintiff alleges that he qualifies for special accommodations under the ADA in that he suffers from chronic degenerating bone disease, diabetes, a cyst condition and respiratory conditions, including shortness of breath and emphysema. The plaintiff alleges that, despite the provisions of DC-ADM 006, the named defendants failed to provide him with reasonable accommodations for eating and showering. As a result of the defendants' failure to provide him with reasonable accommodations, the plaintiff alleges that he did not receive any meals from October 5, 2000, through November 8, 2000, and was not able to shower from February 27, 2001, through April 4, 2001<sup>1</sup>. The plaintiff is seeking compensatory and punitive damages. (Doc. Nos. 1 & 2).

The Prison Litigation Reform Act of 1995, ("Act"), requires that prisoners must exhaust applicable administrative remedies prior to bringing an action in federal court. 42 U.S.C. § 1997(e)(a). Although the plaintiff is seeking only monetary relief in this case, he must still exhaust his administrative remedies, as the Act makes no distinction between claims for damages, injunctive

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<sup>1</sup>Although the plaintiff alleges that he did not receive any meals for approximately one (1) month in late 2000, there is no indication from his complaint that he is currently being deprived of meals. Moreover, the plaintiff is apparently in good enough health to have prepared the instant complaint which is in excess of twenty (20) pages, along with a memorandum of law and supporting exhibits. Thus, there is no indication that the plaintiff is under any imminent danger or threat of harm which would require immediate consideration of the claims set forth in his complaint.

relief, or both. See Booth v. Churner, \_\_\_ U.S. \_\_\_, 121 S.Ct. 1819 (2001) (Prison Litigation Reform Act (PLRA) requires administrative exhaustion even where grievance process does not permit award of money damages and prisoner seeks only monetary damages, as long as grievance tribunal has authority to take some responsive action); Nyhuis v. Reno, 204 F.3d 65 (3d Cir. 2000) (§ 1997e(a) requires an inmate to exhaust administrative remedies prior to bringing a Bivens action regardless of the relief requested). In that connection, DC-ADM 804 was amended on May 1, 1998, to permit inmates to grieve issues that involve the seeking of compensatory damages. See Booth, supra.; Nyhuis, supra.

With respect to the instant action, DC-ADM 006 sets forth the administrative remedies which must be exhausted by an inmate claiming that he has not been given adequate accommodations pursuant to that Policy Statement. DC-ADM 006(VI) (A) (4) provides:

4. Request for Accommodation

a. An inmate who has a disability that he or she believes is not being reasonably accommodated by the Department shall submit a written request for accommodation on Form DC-135A, "Inmate's Request to Staff Member" to the Facility ADA Coordinator or designee.

b. The DC-135A must include the inmate's specific disability(s) and the specific accommodation or service the inmate seeks.

c. The facility ADA Coordinator or designee shall evaluate the request, assess the claim for medical validity, evaluate the inmate's needs (if any), and recommend accommodations that may be necessary.

d. The Facility ADA Coordinator

will submit the recommendations to the Facility Manager and the Regional Deputy Secretary for final determination. The safety and security of the inmate and the security of the facility will always be the overriding concern.

e. The Facility Manager will notify the inmate in writing of the final determination within 20 working days of the inmate making the initial request.

f. An inmate who has a disability that he or she believes is not being reasonably accommodated by the Department may submit a grievance under Department policy DC-ADM 804, "Consolidated Inmate Grievance Review System". Such grievance must state the inmate's specific disability or disabilities and the specific accommodation or service the inmate seeks. The Centralized ADA Coordinator will conduct final review of all ADA grievances pursuant to DC-ADM 804.

(See Doc. No. 2, Attached DC-ADM 006).

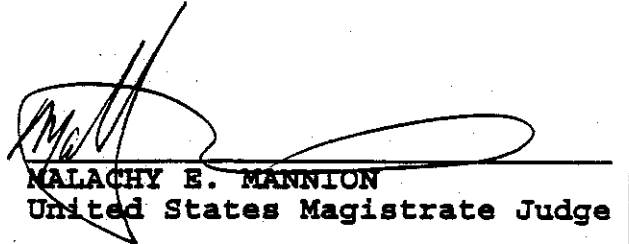
There is no indication that the plaintiff has followed the proper procedures for exhausting his administrative remedies. In fact, the plaintiff indicates in his complaint that he did not file a grievance with respect to the claims raised in his complaint because he "[does] not have to exhaust administrative remedies for Americans with Disabilities Act-Rehabilitation Act." (Doc. No. 1). However, it is clear from the Policy Statement itself that there are administrative remedies which must be exhausted prior to bringing a § 1983 action in this court.

On the basis of the foregoing,

**IT IS RESPECTFULLY RECOMMENDED THAT:**

the plaintiff's complaint, (Doc. No. 1), be **DISMISSED** for

the plaintiff's failure to exhaust administrative remedies.



MALACHY E. MANNION  
United States Magistrate Judge

Dated: July 9. 2001

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RICHARD WOJTCZAK, )  
Plaintiff, )  
vs. )  
PA DEPT. OF CORRECTIONS, )  
Defendant, et al; )  
and )  
JEFFERY A. BEARD, Ph.D., individually and in )  
his official capacity as Secretary, Penna. )  
Dept. of Corrections )  
Defendant, et al; )  
and )  
KENNETH KYLER, individually and in his offi- )  
cial capacity as Superintendent, State Cor- )  
rectional Institution (SCIH) Huntingdon PA )  
Defendant, et al; )  
and )  
P. YARGER, individually and in her official )  
capacity as Corrections Health Administrator, )  
State Correctional Institution, (SCIH) Hunt- )  
ingdon, Penna. )  
Defendant, et al; )  
and )  
ROGER KIMBER, M.D., individually and in his )  
official capacity as Medical Director, State )  
Correctional Institution (SCIH) Huntingdon PA )  
Defendant, et al; )  
and )  
P. EVERHART, individually and in her official )  
capacity as Nurse Supervisor, State Correc- )  
tional Institution (SCIH) Huntingdon, PA )  
Defendant, et al; )  
and )  
SCOTT WALTERS, individually and in his of- )  
ficial capacity as Unit Manager, State Cor- )  
rectional Institution (SCIH) Huntingdon, PA )  
Defendant, et al. )

CIVIL ACTION

No. \_\_\_\_\_

JURY TRIAL DEMANDED

Claims under;  
AMERICANS WITH DISABILITIES ACT  
of 1990 & REHABILITATION ACT of  
1973

**SUMMONS**

You are hereby summoned and required to serve upon Plaintiff Richard Wojtczak, AF-5977, whose address is 1100 Pike Street, Huntingdon, PA 16654-1112, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Dated \_\_\_\_\_

Clerk of the Court

## FORM TO BE USED BY A PRISONER IN FILING A CIVIL RIGHTS COMPLAINT

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

AF-5977

(Inmate Number)

RICHARD WOJTCZAK

(Name of Plaintiff)

1100 PIKE STREET

(Address of Plaintiff)

HUNTINGDON, PA 16654-1112

(Case Number)

## COMPLAINT

vs.

PA DEPT. OF CORRECTIONS;  
JEFFERY A. BEARD, Ph.D.;  
KENNETH KYLER;  
PATRICIA YARGER;  
ROGER KIMBER, M.D.;  
PATTY EVERHART;  
SCOTT WALTERS.

CLAIM UNDER:

AMERICANS WITH DISABILITIES  
ACT of 1990 & REHABILITATION  
ACT of 1973

TO BE FILED UNDER: ☒ 42 U.S.C. § 1983 - STATE OFFICIALS☐ 28 U.S.C. § 1331 - FEDERAL OFFICIALS

## I. Previous Lawsuits

- A. If you have filed any other lawsuits in federal court while a prisoner please list the caption and case number including year, as well as the name of the judicial officer to whom it was assigned:

Wojtczak v. Cuyler, 480 F.Supp. 1288 (E.D.Pa. 1979)(J. Becker)

Civil Action against SCI Huntingdon (M.D.Pa. 1980)

Civil Action against Montgomery County Prison PA (1980)

Civil Action against Holmesburg Prison, Phila. PA (1980)

## II. Exhaustion of Administrative Remedies

- A. Is there a grievance procedure available at your institution?

☒ Yes ☐ No

- B. Have you filed a grievance concerning the facts relating to this complaint?

☐ Yes ☒ No

If your answer is no, explain why not do not have to exhaust administrative remedies for Americans With Disabilities Act - Rehabilitation Act

- C. Is the grievance process completed? N/A

III. Defendants

(In Item A below, place the full name of the defendant in the first blank, his/her official position in the second blank, and his/her place of employment in the third blank. Use Item B for the names, positions and places of employment of any additional defendants.)

A. Defendant See pages 5 to 7 is employed  
as \_\_\_\_\_ at \_\_\_\_\_

B. Additional defendants See pages 5 to 7  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IV. Statement of Claim

(State here as briefly as possible the facts of your case. Describe how each defendant is involved, including dates and places. Do not give any legal arguments or cite any cases or statutes. Attach extra sheets if necessary.)

1. See pages 7 to 14  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
2. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
3. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

V. Relief

(State briefly exactly what you want the court to do for you. Make no legal arguments. Cite cases or statutes.)

1.

See pages 19 - 20

1

2.

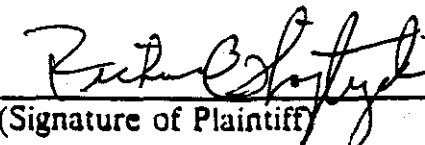
3.

Signed this 11 day of June, 2001.

  
(Signature of Plaintiff)

I declare under penalty of perjury that the foregoing is true and correct.

6-11-01  
(Date)

  
(Signature of Plaintiff)

## JURISDICTION OF THE COURT

=

Your Plaintiff, Richard Wojtczak, is properly before this Court with a claim under the Americans Disabilities Act of 1990, Title I, II, eff. Jan. 1992 and Rehabilitation Act with a 42 U.S.C.A. § 1983 Civil Action Complaint, 42 U.S.C. § 12101 et seq., and Plaintiff does not have to exhaust administrative remedies. See Roe v. County Com'n of Monongalia County, 926 F.Supp. 74, 76-77 (N.D.W.Va. 1996); Bledsoe v. Palm Beach Cty. Soil & Water Conserv., 133 F.3d 816, 824-825 (11th Cir. 1998); Dertz v. City of Chicago, 912 F.Supp. 319, 323-325 (N.D.Ill. 1995); Pennsylvania Dept. of Corrections v. Yeskey, 524 U.S. 206, 118 S.Ct. 1952 (1998); Nolan v. Wheatley, 835 F.Supp. 476, 482 (N.D.Ind. 1993); Smith v. Barton, 914 F.2d 1330, 1338 (9th Cir. 1990); Harris v. Thigpen, 941 F.2d 1495, 1521-1522 (11th Cir. 1991); Bonner v. Lewis, 857 F.2d at 561-564; Finley v. Giacoffe, 827 F.Supp. 215, 219 n.3 (S.D.N.Y. 1993). 28 U.S.C. §§ 1331, 1343; Venue is proper in the United States District Court for the Middle District of Pennsylvania under 28 U.S.C. § 1391(b); 42 U.S.C. § 12101 et seq..

## INTRODUCTION

Your Plaintiff, Richard Wojtczak, respectfully submits to this Honorable Court that he is a qualified individual with disabilities.

All defendants were at all times material to this action "employees" ~~of~~ the Penna. Dept. of Corrections (DOC), and/or "sub-contractors" employed by the Penna. Dept. of Corrections (DOC).

All defendants did, under color of State law and in consort with each other, violate Plaintiff's rights guaranteed by the 8th and 14th Amendments of the U.S. Constitution . . . and Plaintiff's rights as contained in the Americans with disabilities Act of 1990, the Rehabilitation Act . . . Titles I, II; 42 U.S.C. § 12101 et seq. . . . with deliberate indifference, and acted wantonly with gross disregard to the serious life threatening medical conditions of the Plaintiff as to cause unnecessary and wanton infliction of pain and suffering upon your disabled Plaintiff.

#### PARTIES

1. Defendant Penna. Dept. of Corrections, official who supervised the defendants who mistreated Plaintiff, who was supposed to know what was going on and keep it from happening. P.O. Box ~~598~~ 2520 Lisburn Rd., Camp Hill, Pa. 17001-0598.

2. Defendant Jeffery A. Beard, Ph.D., Secretary Penna. Dept. of Corrections, P.O. Box 598, 2520 Lisburn Rd., Camp Hill, Pa. 17001-0598, Official who supervised other defendants who mistreated Plaintiff, who was supposed to know what was going on and keep it

from happening.

3. Defendant Kenneth Kyler, Superintendent of the State Correctional Institution at Huntingdon, Penna. (SCIH), 1100 Pike Street, Huntingdon, PA 16652. Official who supervised other defendants who mistreated Plaintiff.

4. Defendant P. Yargar, Corrections Health Care Administrator, State Correctional Institution at Huntingdon, Penna. (SCIH), 1100 Pike Street, Huntingdon, PA 16652. Official who approves, or denies, treatment to inmates, who also supervised other defendants that mistreated Plaintiff.

5. Defendant Roger Kimber, M.D., Medical Director, State Correctional Institution at Huntingdon, Penna. (SCIH), 1100 Pike Street, Huntingdon, PA 16652. Official who prescribes and delivers treatment to inmates who also participated with other defendants that mistreated Plaintiff.

6. Defendant P. Everhart, Nurse Supervisor, State Correctional Institution at Huntingdon, Penna. (SCIH), 1100 Pike Street, Huntingdon, PA. 16652. Official who supervises treatment delivered to inmates, who also participated with other defendants that mistreated Plaintiff.

7. Defendant Scott Walters, Unit Manager of BA Block, State

Correctional Institution at Huntingdon, Penna. (SCIH), 1100 Pike Street, Huntingdon, PA 16652. Official who supervises and coordinates treatment delivered to inmates, who also participated with other defendants that mistreated Plaintiff.

#### STATEMENT OF CLAIM

8. Plaintiff, Richard Wojtczak, is an incarcerated inmate at the State Correctional Institution at Huntingdon, Penna., Penna. Department of Corrections System. (SCIH).

9. Plaintiff is a qualified individual with disabilities. Plaintiff suffers from a chronic, degenerating bone disease in both knees, hips, and disc in spine. This chronic disease is an incurable medical condition.

10. Even with the use of a cane, it is extremely difficult and painful for Plaintiff to walk long distances, walk for any length of time, standing for any length of time. It is extremely painful for Plaintiff to walk up and down stairs.

11. ~~Plaintiff~~ Plaintiff is an insulin dependant diabetic, taking 3 injections of insulin per day, 260 units per day. Plaintiff must eat at least 3 meals per day in order to achieve the insulin-food balance required to keep his diabetes under control.

12. Food, eating at least 3 meals per day along with taking insulin is part of the treatment of diabetes.

13. Plaintiff also suffers from a cyst condition. Plaintiff needs to shower regularly as part of the treatment for this cyst condition. Cysts occur on face and scalp (and other areas), that get very large, are painful, and turn to open sores with a discharge. Cysts cause disfigurement with scarring.

14. Plaintiff also has respiratory conditions, "Chronic Obstructive Pulmonary Disease" (COPD), shortness of breath, high blood pressure, and some emphysema.

15. All of these medical conditions of the Plaintiff are well documented in Plaintiff's medical records at SCIH. All of the defendants are well aware of Plaintiff's disabling medical conditions.

#### INSTITUTIONAL MEALS

16. ~~In~~ the latter part of the year 2000, Plaintiff's degenerating bone ~~disease~~ deteriorated to where he could no longer walk to and from the dining hall to eat his meals.

17. On or about September 30, 2000, Dr. Reiners approved an order for Plaintiff to eat his meals in his cell. Approval was

only for one week, Plaintiff was told to see Dr. Bardell, acting medical director, to extend this approval.

18. On October 2, 2000, Plaintiff saw Dr. Bardell and he extended said order for Plaintiff to be fed in his cell for 6 months.

19. On October 5, 2000, Plaintiff was told by Sargt. Heckman that "feed in cell order" had been cut/terminated. Plaintiff then spoke with Defendant Scott Walters, Unit Manager of Plaintiff's cell block, and he (Walters) told Plaintiff that he (Walters) had taken care of "feed in" order . . . . "the order has come down, t everything is taken care of." However, Plaintiff still had not been fed!

20. On October 6, 2000, Defendant R. Kimber, M.D. (the new Medical Director at SCIH) told Plaintiff that he (Kimber) was instructed by the Deputy Superintendent to tell Plaintiff: (a) that he (Plaintiff) would not be fed in his cell [because this was an "inconvenience for the guards"] and; (b) that he (Plaintiff) would have ~~to~~ walk to the dining hall like everyone else! Plaintiff then ~~asked~~ Defendant Kimber the name of the Superintendent of which there was no response!

21. On or about October 5, 2000 to November 8, 2000, Plaintiff received no meals from SCIH: (a) because of Defendants

Walters' and Kimber's deliberate, willful and wanton refusal to have meals delivered to Plaintiff's cell, and; (b) because of Plaintiff's inability to walk to the dining hall due to his chronic degenerating bone disease in both knees, hips and disc in spine.

22. On or about October 5, 2000 to November 8, 2000, Plaintiff advised Defendants Kimber, Walters and Everhart, on numerous occasions, that he (plaintiff) was not being fed by the institution. The Defendants' answers ranged from no response at all to "I will let you know", "we are having meetings on that", "I will get back to you", "I'll find out", "I'm waiting to hear from medical", "I'm waiting to hear from the unit manager", "we are having meetings to see what is available for you."

23. Richard Wojtczak, your Plaintiff, is a qualified individual with diabetes . . . insulin dependant diabetic, degenerating bone disease in both knees, hips, disc in spine, respiratory condition - COPD - shortness of breath - high blood pressure, and some emphysema. The deliberate indifference and wanton disregard for Plaintiff's disabilities exhibited by the defendants inflicted pain and suffering on Plaintiff, placed Plaintiff in a life threatening condition. Plaintiff experienced headaches, dizziness, blurry vision, nausea, stomach pain, overall body pain, light headiness, faintness, pain from the large cysts, and disfigurement of face scalp by scarring from these cysts.

PERSONAL HYGIENE - SHOWERS

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24. The Defendants' wanton, capricious, reckless disregard for Plaintiff's disabilities and basic human needs continues.

25. Your Plaintiff, Richard Wojtczak, also suffers disabling respiratory conditions . . . COPD, shortness of breath, high blood pressure, some emphysema. These conditions are also well documented in Plaintiff's medical file at SCI Huntingdon, Pa.. All of the defendants are well aware of these disabling conditions of the Plaintiff.

26. Because of the aforementioned respiratory conditions, for the last several years the Plaintiff was approved to shower in the infirmary-medical dept.. Due to the heat and steam in the general population cell block showers, the Plaintiff cannot shower there because he gets dizzy, lightheaded, faint, and on the verge of passing out.

27. The latest approval for these shower arrangements in the infirmary ~~was~~ granted by Defendant Dr. R. Kimber for one year, until ~~December~~ 2001. In addition to Plaintiff, there were several other inmates showering in the infirmary-medical dept. for various reasons.

28. On February 27, 2001, Plaintiff was told by medical

staff that he could no longer shower in the infirmary. these "showers were being closed down." Plaintiff was told to contact Defendant Scott Walters as to where Plaintiff was to shower.

29. On February 27, 2001, your Plaintiff wrote a request slip to Defendant Scott Walters, unit manager, as to where he should shower. Defendant Scott Walters' response was "I have asked medical to re-evaluate your ability to shower with the general population. When they respond to me I will let you know."

30. On March 1, 2001, Plaintiff spoke with Defendant Dr. R. Kimber, as to where he was to shower. Plaintiff and Defendant Kimber discussed again Plaintiff's respiratory conditions and his inability to shower in general population cell block showers. Defendant Kimber told Plaintiff that he would let him know where he could shower.

31. On March 14, 2001, Plaintiff spoke with Defendant Patty Everhart, Nurse Supervisor, about where he was to shower. Plaintiff again discussed his respiratory conditions and general population ~~cell~~ block showers. Defendant Everhart informed Plaintiff ~~that~~ she was waiting to hear from Defendant Scott Walters as to what was available for the Plaintiff.

32. On March 14, 2001, Plaintiff asked Defendant Everhart why he could not shower in the ATA room shower. Defendant Everhart

told Plaintiff "that the deputy superintendent said the ATA room shower is off-limits, absolutely NO one is to shower in the ATA room shower. Plaintiff then asked Everhart which "deputy superintendent" told her that? However, there was no response! Plaintiff then explained to Everhart that there were already three inmates showering in the ATA room shower and, still, there was no response from Everhart!

33. The three inmates showering in the ATA room shower . . . one of these inmates has respiratory conditions . . . one of these inmates has leg and back conditions . . . third inmate's medical problems are unknown to Plaintiff. t

34. At least two of the inmates showering in the ATA room shower have almost identical medical conditions as Plaintiff, however, Plaintiff still was not permitted to shower in the ATA room shower.

35. From February 27, 2001 to April 4, 2001, the defendants denied Plaintiff to shower. The defendants were well aware of this situation.

36. Plaintiff suffers from a painful and serious cyst condition. This medical condition is well documented in Plaintiff's medical file at SCI Huntingdon, Penna.. The defendants are well aware of this medical condition.

37. When Plaintiff does not shower regularly he breaks out in these cysts. These showers are part of the treatment for these cysts. These cysts occur on face and scalp (and other areas), they get very large, are painfull, and they turn into open sores with discharge. These cysts cause disfigurement with scarring.

38. By not being permitted to shower for over one month, Plaintiff did break out with these cysts on face, neck and chest.

#### CAUSE OF ACTION

This Cause of Action is to be incorporated against each and all defendants herein as though fully set forth to each and all defendants. The allegations in paragraphs 1 to 38 herein are also incorporated by reference herein as though fully set forth.

Your Plaintiff, Richard Wojtczak, is a qualified individual with disabilities as previously discussed herein. All of the defendants, in their entirety, in this cause of action, has shown deliberate indifference and wanton disregard for the health, safety, ~~and~~ life of this Plaintiff, by intentionally refusing to provide to ~~four~~ disabled Plaintiff, the most basic human needs of minimal civilized measures of life's necessities. This offends the evolving standards of decency and being repugnant to the conscience of mankind . . . did with full knowledge, discriminate against Plaintiff because of his disabilities, did violate Plain-

tiff's rights under the 8th and 14th Amendments of the U.S. Constitution, and did violate Plaintiff's rights as contained in the Americans With Disabilities Act of 1990 - Rehabilitation Act of 1973.

Each defendant, at all times, did have full knowledge of Plaintiff's disabilities and did have full knowledge of the Penna. Dept. of Corrections policies - directives - customs.

The Penna. Dept. of Corrections issued a policy statement on June 28, 1999, effective August 16, 1999 . . . "Reasonable Accommodations for inmates with Disabilities", DC-ADM 006. This policy explains the Americans With Disabilities Act of 1990.

With their usual arrogance, these defendants in their entirety, completely ignored their own policies, specifically DC-ADM 006 . . . did not feed Plaintiff for one month . . . did not allow Plaintiff to shower for one month . . . and did not make "Reasonable Accommodations" for this disabled Plaintiff. These "accommodations" would Not have created an expense or hardship for the defendants. Plaintiff could have been fed in his cell. (Other inmates on the same cell block as Plaintiff were fed in their cells). Plaintiff could have showered in the ATA room shower. (Other inmates were already showering in the ATA room shower).

~~Defendants~~ failed to remedy violations against this disabled Plaintiff, with deliberate indifference, and with malicious, wanton state of mind. The defendants, with deliberate indifference, and malicious, wanton state of mind to Plaintiff's disabilities . . . diabetes, degenerating bone disease, respiratory ailments,

cyst condition . . . did injure and cause Plaintiff unnecessary pain and suffering.

Penna. Dept. of Corrections, Defendant, et al is a government entity, which is responsible for the health and safety of the inmates incarcerated in the State Correctional Institutions in Penna.. Penna. Dept. of Corrections issues policies - directives to each state correctional institution in Penna., for the maintenance and overall operations of said institutions. Defendant Jeffery A. Beard, Ph. D., the Secretary, Penna. Dept. of Corrections, is a decisionmaker and has the authority to establish "entity" policy, and the authority to enforce the policy statements-directives issued by the Penna. Dept. of Corrections. This establishes the Penna. Dept. of Corrections liability.

Jeffery A. Beard, Ph.D., Defendant, et al, Secretary, Penna. Dept. of Corrections, is a decisionmaker and has the authority to establish "entity" policy and the authority to enforce "entity policy" and the authority to be certain policy is complied with, specifically DC-ADM 006. Under his supervision any action, in the instant ~~case~~ non-action to enforce compliance with DC-ADM 006 reflects ~~the~~ official government entity policy. In this instant case Defendant Beard failed to enforce compliance with policy DC-ADM 006, at SCI Huntingdon, Penna..

Kenneth K. Kyler, Defendant, et al, Superintendent, State

Correctional Institution at Huntingdon, Penna.. Defendant Kyler has the supervisory authority to enforce compliance with DC-ADM 006, at SCI Huntingdon, Penna.. In this instant case, Defendant Kyler failed to enforce compliance with DC-ADM 006 at SCI Huntingdon, Penna..

P. Yarger, Defendant, et al, Corrections Health Care Administrator, State Correctional Institution at Huntingdon, Penna.. Approval Orders by doctors for inmates are recorded by Defendant P. Yarger. Defendant P. Yarger has the supervisory authority to enforce compliance with DC-ADM 006 at SCI Huntingdon, Penna.. In this instant case, Defendant P. Yarger failed to enforce compliance with DC-ADM 006 at SCI Huntingdon, Penna..

Roger Kimber, M.D., Defendant, et al, Medical Director, State Correctional Institution at Huntingdon, Penna.. Defendant Kimber knows of policy DC-ADM 006 because it addresses medical issues. If Defendant Kimber does not have the authority to enforce compliance with policy DC-ADM 006, Defendant Kimber, himself did not comply with policy DC-ADM.

P. Everhart, Defendant, et al, Nurse Supervisor, State Correctional Institution at Huntingdon, Penna.. Defendant Everhart knows of policy DC-ADM 006 because it addresses medical issues. If Defendant Everhart does not have the authority to enforce compliance with policy DC-ADM 006, Defendant Everhart, herself,

failed to comply with policy DC-ADM 006.

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Scott Walters, Defendant, et al, Unit Manager, State Correctional Institution at Huntingdon, Penna.. Defendant Walters had full knowledge of Plaintiff's disabilities, and was involved in Plaintiff "being fed", and "showers" for the Plaintiff. Defendant Walters failed to act despite his knowledge of a substantial risk of serious harm to Plaintiff. Defendant Walters knows of policy DC-ADM 006 by way of his supervisory position as Unit Manager. If Defendant Walters does not have the authority to enforce compliance with DC-ADM 006, Defendant Walters, himself, failed to comply with DC-ADM 006.

#### DEFENDANTS

Penna. Dept. of Corrections; Jeffery A. Beard, Ph.D.; Kenneth Kyler all have the necessary authority to enforce compliance with policy DC-ADM 006 . . . and were grossly negligent in the management of subordinates, allowing the discrimination against the Plaintiff because of his disabilities. They failed to act despite their knowledge of substantial risk of serious harm, pain and suffering ~~as~~ disabled inmates - Plaintiff. This failure to act caused Plaintiff unnecessary pain, suffering and injury.

Kenneth Kyler; P. Yarger; Roger Kimber, M.D.; P. Everhart; Scott Walters all have the necessary authority to comply with

policy DC-ADM 006. They were grossly negligent in management, failing to ~~te~~minate the discrimination against this Plaintiff because of his disabilities. They failed to act despite their knowledge of substantial risk of serious harm, pain and suffering to the disabled Plaintiff. This failure to act caused Plaintiff unnecessary pain, suffering and injury.

All of the defendants acted with a sufficiently culpable state of mind. A state of mind of deliberate indifference shown by actions characterized by wantonness, a wanton infliction of pain upon this Plaintiff, causing injury. The defendants' acts, were a serious deprivation of basic human needs, of the minimal, civilized measure of life's necessities which a civilized society can not tolerate, NO, must not tolerate.

#### RELIEF

Your Plaintiff, Richard Wojtczak, brings this action against the defendants in BOTH their individual AND official capacities.

~~Wherefore~~, Plaintiff respectfully prays that this Honorable Court enter ~~judgment~~ judgment granting Plaintiff:

1. Punitive Damages in the amount of \$1,500,000.00 to Plaintiff from all defendants and each of them;

2. Compensatory Damages in the amount of \$1,000,000.00 to Plaintiff from all defendants and each of them;

3. Future Damages in the amount of \$500,000.00 to Plaintiff from all defendants and each of them for injuries, medical conditions not yet apparent at \$50,000.00 a year for ten years;

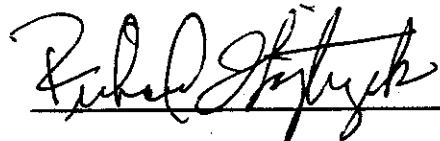
4. Trial by Jury on all issues triable by jury;

5. The costs and disbursement of this action, including reasonable attorney fees and costs;

6. All federal monies being given to the PA Dept. of Corrections be terminated until such time as the PA Dept. of Corrections fully complies with the Americans with Disabilities Act of 1990, Rehabilitation Act of 1973;

7. Such other and further relief as the Court deems necessary, appropriate and equitable.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Richard Wojtczak', written over a horizontal line.

Richard Wojtczak, pro se  
AF-5977  
1100 Pike Street  
Huntingdon, PA 16654-1112

## Certificate of Service

I, Richard Wojtyak, hereby certify that I have mailed a true and correct copy of this -- Plaintiff's Objections to Magistrate Judge, Report-Recommendations-Findings Dismissing Plaintiff's Civil Action -- To:

Clerk of Courts  
U. S. District Court  
Middle District of Penna.  
228 Walnut St.  
P. O. Box 983  
Harrisburg, Pa. 17108  
4 copies

Magistrate - Judge  
Malachy E. Mannion  
U. S. District Court  
Middle District of Penna.  
235 N. Washington Ave.  
P. O. Box 1148  
Scranton, Pa. 18501  
1 copy

On this 17<sup>th</sup> day of July 2001

Respectfully submitted,

s/ Richard Wojtyak  
Richard Wojtyak AF5977  
1100 Pike St.  
Huntingdon, Pa. 16654-1112